

CR 05-40006
J. Saylor
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United States Court of Appeals For the First Circuit

No. 07-2467

UNITED STATES,

Appellee,

v.

HERIBERTO RODRIGUEZ,

Defendant, Appellant.

Before

Lynch, Lipez and Howard,
Circuit Judges.

JUDGMENT

Entered: March 26, 2008

Appellant claims that the district court erred in finding, without benefit of a jury or an admission, that he had three prior convictions that qualified as predicates for application of the Armed Career Criminal Sentencing enhancement. 18 U.S.C. § 924(e). As appellant conceded both in the district court and in his brief on appeal, this argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998), a decision by which this court is bound unless and until the Supreme Court holds to the contrary. United States v. Jimenez-Beltre, 440 F.3d 514, 520 (1st Cir. 2006) (en banc), cert. denied, 127 S.Ct. 1907 (2007).

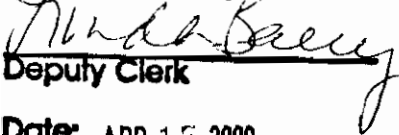
The government's motion for summary disposition is granted.
The judgment is affirmed. 1st Cir. R. 27.0(c).

By the Court:

Richard Cushing Donovan, Clerk.

**Certified and Issued as Mandate
under Fed. R. App. P. 41.**

Richard Cushing Donovan, Clerk


Deputy Clerk

Date: APR 17 2008

By: _____
Chief Deputy Clerk.

[cc: Ms. Byrne, Ms. Chaitowitz, Mr. Bator and Mr. Casey]